

The foregoing proposed amendment to claim 1 is presented after final for purposes of making rejected claims 1, 2 and 4 in condition for allowance or in better form for consideration on appeal. As will be explained by applicant's attorney during the interview, the insertion "above the heel portion" specifies the portion of the lasting board which is devoid of penetrating channels. In contrast, Ellis '924 teaches at p. 18, lines 13-14 that a key functional advantage of the patent's approach (i.e. the use of the deformation sipes referred to at p. 18, line 1) is that the shoe's sole can follow the natural deformation of "at the wearer's heel"

In the Office Action it was indicated that Ellis teaches that the sipes (channels) do not have to penetrate the rigid shank (lasting board), citing page 23, lines 17-19. The sentence at which that portion appears beginning at line 11 states "Since such shank devices are located" The phrase "such shank devices" refers to the preceding sentence at page 23, lines 6-12 which states "Any other such rigid device . . . such as a conventional shoe shank providing support to the long arch of the foot in the instep area . . . must also be penetrated fully by deformation sipes in order for the shoe's sole's deformation to be parallel to that of the foot." (Emphasis added). In other words, the discussion in Ellis of the possibility of deformation sipes not penetrating the shank devices was only in reference to shank devices in the instep area rather than that of the heel area. Any other interpretation would be clearly inconsistent with Ellis' statement at page 23, lines 3-4 that the "rigid layer 174 would obviously have to be penetrated by the deformation sipes" This is because the layer 174 is that shown in Fig. 14, which Ellis describes as being a cross section at the heel (page 22, lines 34-35).

The present amendment to claim 1 together with its dependent claims 2 and 4 is believed to be within the intent of applicant's amendment filed June 24, 1997. Claim 1 since its original filing included the limitation of the channel which extended through and divided the underlying heel portion into the laterally adjacent compression elements, and the limitation regarding the lasting board was added with the amendment of March 14, 1996 (of the parent application) in response to a rejection which involved Ellis. Applicant has consistently argued that the claimed channel (which was only the heel portion of the sole) did not extend up into the lasting board. The present amendment makes clear that it is the portion of the lasting board above the heel portion which is devoid of the penetrating channels.

Accordingly, in view of the foregoing it is respectfully submitted that the claims as now amended are in condition for allowance and such action is solicited. Otherwise, it is submitted that the amendment should be entered to put the rejected claim in better form for consideration on appeal.

Respectfully submitted,



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